INFORMATION LETTER

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NATIONAL CANNERS ASSOCIATION

For Members Only

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CONGRESS EXTENDS PRICE CONTROL TO JULY, 1945

Amendments Are Adopted Relating to Subsidies, Court Procedure and Protests to OPA

The conference report on the bill to extend the Emergency Price Control Act as approved by Congress and sent to the President June 23 extends the price and wage stabilization programs to June 30, 1945; modifies and liberalizes the procedure by which protests to Office of Price Administration regulations may be made; permits continuance of the present subsidy programs until June 30, 1945, after which no subsidies are permitted unless specific appropriations for them are made by Congress; continues the exclusive jurisdiction of the Emergency Court to decide cases involving the validity of price regulations but provides for a stay in all cases involving OPA price regulations until the defendant in the particular proceeding has obtained a decision by the Emergency Court on the validity of the particular regulation.

Summary of Major Compromises Between House and Senate Bills

The OPA extension legislation reported by the conferees on the disagreeing House and Senate bills and accepted by Congress is in substance the version passed by the Senate (see INFORMATION LETTER Nos. 988 and 990, June 3 and 17, 1944). What the conferees did was to recommend a conference substitute bill in the form of the Senate bill and to write into the form of the Senate bill compromises between important differences in the House and Senate legislation.

One of the most important compromises is the acceptance by the Senate of the House date for expiration of the price and wage stabilization powers. The Senate bill provided that the OPA and Wage Stabilization Acts should be extended until December 30, 1945, but the bill as reported by the conferees and accepted by the Congress will extend the Emergency Price Control Act and the Stabilization Act of 1942 for one year, that is, until June 30, 1945.

Perhaps the most interesting provisions in the compromise conference report are those relating to the much publicized Bankhead cotton amendment, and Dirksen court review amendment. The Bankhead amendment did not directly affect canners but it was one of the prime points of disagreement between the House and Senate. As a result of the defeat in the House of the Brown amendment, which was identical to the Bankhead amendment, the House adopted an amendment which, in effect, guaranteed to farm producers the higher of parity, or January to September 15, 1942, prices. This amendment, called the Pace amendment, together with the so-called Kleberg amendment (see INFORMATION LETTER, No. 990, June 17, 1944), would have resulted in all persons, including canners, being required to present assurances to unidentified authorities that they had paid the farm producers of raw agricultural commodities the effective farm price. The burden of discovering the proper price to be paid to the farmer would have been placed upon the canner or other processor who purchased the agricultural commodity. These amendments, the Bankhead, Pace and Kleberg amendments, were all rejected in the conference committee compromise.

(Continued on page 8280)

CALIFORNIA SWEET CHERRY GROWER PRICES ANNOUNCED

Processors' Ceilings to Include Average $233 per Ton for Canning, Freezing; $215 for Other Types

Processors' ceiling prices for the 1944 pack of canned and frozen sweet cherries in California will be constructed to include for raw product cost an average grower price of $233 per ton, the Office of Price Administration and the War Food Administration announced June 21. It was stated also that an average grower price of $215 per ton for brining cherries will be used in constructing processors' ceiling prices for cocktail cherries, brined cherries, Maraschino and glace cherries and other similar products.

Ceiling prices for processed cherries will be established on a formula basis this year. Since 1941 will be the base period used in establishing formula prices, the raw material cost allowances in such ceilings will be based on grower price increases since that time, the OPA said.

Grower prices in 1941 for sweet cherries for canning and brining in Cali-

(Concluded on page 8278)

Wages of Foreign Agricultural Workers Imported Under War Food Administration Labor Program Subject to Certain Deductions

Inquiries have been received from a number of canners as to whether deductions under the Social Security Program and under the withholding provisions of the Revenue Act of 1943 should be made in the case of foreign agricultural workers imported from the West Indies or Mexico under the War Food Administration labor program and assigned to canners. Many of these workers are presently being employed in pea vining operations, and the law provides that such foreign workers, though classified as agricultural workers, may in certain circumstances be assigned to work in canneries. (See INFORMATION LETTER No. 988, June 3, 1944, page 8243.)

Considerable confusion exists as to the application of the Social Security taxes and the income tax withholding provisions because of the conflicting definitions of "agricultural labor." The applicable statutory provisions and administrative interpretations are set forth below.

Social Security Tax Deductions

It will be recalled that under the Social Security statutes, there is ordinarily required to be deducted from the wages of all cannery workers an unemployment insurance tax of 1 per cent; and the employer must also pay the payroll tax levied under that Act. The Social Security Law is, however, inapplicable to "agricultural workers." That phrase for Social Security Tax purposes is narrowly construed. Workers on pea vining stations are exempt only if employed by the grower, and are not exempt if employed by the processor. Accordingly, foreign workers imported by the WFA and employed by a canner in pea vining operations are subject to Social Security taxes, and, for purposes of these taxes are to be treated

like any other employee of the canner. Foreign workers employed in regular agricultural occupations are not subject to such laws.

It appears that existing confusion is largely due to the fact that WFA, in assigning imported workers to pea vining operations, appears to have taken the position that such work is, for WFA purposes, to be considered as "agricultural." Nevertheless, the existing regulations of the Bureau of Internal Revenue prevail with respect to Social Security taxes. Obviously, foreign workers employed in actual canning operations are likewise subject to Social Security taxes.

Withholding of Income Taxes

The Current Tax Payment Act, under which the canner is required to withhold portions of the wages paid to his employees, exempts from its provisions wages paid to non-resident aliens. It is believed that the Mexicans, Jamaicans, and other foreign agricultural workers would be held to be included within this exemption.

There is, however, a further provision in the revenue acts which imposes a 30 per cent income tax on wages earned in the United States by nonresident aliens, but the law under which WFA imports foreign workers for agricultural purposes (including emergency use in canneries) specifically exempts the wages of such imported workers from this provision.

It would seem, therefore, that the canner is not required to make deductions for income tax withholding purposes, from the wages of these foreign workers imported by WFA.

Deductions Required by Contracts for Benefit of Workers

All of the contracts between a canner, WFA and the worker require that the canner deduct certain amounts from the worker's wages. As a general matter, the employer must deduct this amount from the worker's wages and give the deductions to WFA, which then remits the money to the worker's own government, which holds the money for the benefit of the worker and his dependents.

The amounts to be withheld are, of course, prescribed in the particular contract. In order to know exactly what amounts the canner must deduct and to whom the money is to be sent by him, he should carefully examine the provisions of his own contract. However, the usual provision is that the canner shall deduct one dollar a day from wages, and, if the worker is unemployed, the canner must deduct one-third of the subsistence amount required to be paid by him to the worker. Similar provisions are found in the contracts for employment of Bahamans, Jamaicans, Barbadians and Mexicans.

Other Workers

In the case of Puerto Rican workers, imported directly by the processor or by the War Manpower Commission, the Social Security taxes are applicable in the same fashion as they would be in the case of domestic workers, that is, agricultural workers are exempt, but cannery workers are not. Where employees engaged in pea vining are employed by the processor, they have been held subject to the Social Security Act.

With respect to income tax deductions, the rate of deduction is dependent upon whether the Puerto Rican workers are imported directly by the processor or "under the authority of" WMC. Puerto Rican workers are treated as non-resident aliens for income tax purposes. If imported directly by the employer under individual contracts, the 30 per cent withholding tax, applicable to all nonresident aliens, applies to such Puerto Rican workers. If imported under the authority of the War Manpower Commission, there is a special statutory provision which permits the deduction from wages as a withholding for income tax purposes of ten per cent. Importation "under the authority of" the War Manpower Commission means recruitment through the WMC offices. This is the only deduction for income tax purposes which need be taken in the case of such workers.

These suggestions with respect to income tax deductions appear to reflect the present statutes. No specific rulings have as yet been issued by the Bureau of Internal Revenue.

New Supply of War Prisoners to be Available to Canners

The War Department anticipates that considerable numbers of prisoners of war will reach the United States within the next several weeks. The plan of the Department is to allocate them on an equitable basis to the various service commands and to make them immediately available for work in connection with the processing of perishable foods as well as in other high priority activities.

The War Department has released no definite figures on the number of prisoners expected, nor has an announcement of definite dates of arrival of any specific number of them been made. It is anticipated that a sufficient number will arrive to be of material aid in processing the midsummer and early fall perishable fruits and vegetables.

The Provost Marshal General's Office, in cooperation with the War Manpower Commission and the War Food Administration, is revising the prisoner of war allocations in light of this development.

Purchase of Insecticides

The War Production Board urges early purchasing of supplies of arsenical insecticides for the coming summer months. Uncertain transportation facilities, manpower and container shortages might delay last-minute orders and result in heavy damage to insect-infested crops, WPB explained.

The shortage of containers is one of the most pressing problems facing the arsenical insecticides industry today and one that will become more serious in the future, WPB states.

Dodds, Kunkel and McMillen Are Given New WFA Positions

The appointments of John E. Dodds as assistant chief of the Fruit and Vegetable Branch, and Charles F. Kunkel as assistant chief of the Procurement Branch, were announced June 24 by the War Food Administration's Office of Distribution.

Formerly chief of the Branch's Processed Marketing Division, Mr. Dodds succeeds Mr. Kunkel. Donald F. McMillen will take over Mr. Dodds' former duties and has been named acting chief of the division.

As assistant chief, Mr. Dodds' duties will include both fresh and processed fruits and vegetables programs and activities. Mr. Kunkel, as assistant to Maurice L. Brenner, chief of the Procurement Branch, will help administer procurement programs of the Office of Distribution. Mr. McMillen will be in charge of the Fruit and Vegetable Branch's processed fruits and vegetables activities.

Virginia Potato Support Price

Beginning and closing dates for the 1944 Irish potato support-price program in Virginia were announced June 22 by the War Food Administration. The program, which became effective June 19, will be continued, if necessary, for a period of 30 days, exclusive of Sundays and holidays. All operations carried on in Virginia to support Irish potato prices will be in accordance with the provisions of the Irish potato support-price program announced last March 31 by the WFA, it was stated.

Distributor Sales of Canned Seafood Affected by Order

A new price regulation (MPR 542), designed to reduce retail prices of canned fish and seafood by tightening up pricing methods for primary and other distributors, except wholesalers and retailers, was issued June 19 by the Office of Price Administration, and will become effective July 17.

The regulation covers distributor sales of canned Maine sardines, canned California sardines, domestic canned crabmeat, canned salmon, canned mackerel, canned tuna fish, canned shrimp, canned Eastern and gulf oysters, canned Atlantic sea herring and alewives, canned clams, canned fish flakes and the canned domestic fish or seafood now priced at canner levels under the General Maximum Price Regulation, which establishes each seller's ceiling at the highest price he charged for the item during March, 1942.

The new regulation provides that qualified primary distributors may take a mark-up of six per cent over "net cost." Other distributors may sell at a ceiling price no higher than their supplier's ceiling price for that item, f. o. b. shipping point, plus incoming freight.

Before he may price canned fish and seafood under the new regulation, every distributor prior to wholesale must file an application with his OPA regional office. If he can establish that he meets the regulation's qualifications for a primary distributor and that he was doing business as a primary distributor before April 28, 1942, the date of issuance of the first general price control measure, the regional office may give permission to use the six per cent mark-up.

Addition to "Microanalytical Methods" is Made Available

In the INFORMATION LETTER for July 31, 1943, announcement was made that permission had been granted to the Laboratory to reprint microanalytical methods which are now used by the Food and Drug Administration. Since that time there has been a distribution of methods of specific interest to canners of various commodities.

The original distribution contained a "General Statement" pertaining to equipment and special technics used in applying the methods. There is now available an additional sheet referring to equipment which pertains to the construction of two "home-made" filters for use where an ample continuous supply of water is needed. The sheet is available on request.

Ceilings for Gummed Tape

Manufacturers of gummed kraft sealing tape are being permitted to apply for higher ceiling prices under certain conditions specified in Amendment 3 to Maximum Price Regulation No. 589, made effective June 21 by the Office of Price Administration.

The conditions named are (1) the existing maximum price is subjecting the manufacturer to substantial hardship, and (2) either continuance of the seller's production of this commodity is required to meet a military or essential civilian need, or loss of the seller's production will force his customers to resort to higher priced sources of supply and no adequate substitute is available at a price equal to or lower than the requested maximum price.

No Possibility for Increase in Can Production Says WPB

Increases in the production of metal cans cannot be expected at present, the War Production Board has announced.

Factory capacity for the processing of steel for containers is under great strain in the preparation of sheet metal for landing barge plate, aircraft landing mats and shell cases, WPB officials said, and until requirements for these direct military goods slacken, sheet metal for cans cannot be rolled in greater quantities.

Current production of tinplate for food cans, military and civilian, is established at approximately 2,100,000 tons for 1944, slightly in excess of 1940's production figure. More metal will be used this year than last to pack food because, weather and manpower permitting, 1944's food pack is expected to about equal the all-time high of 1942.

The competition for rolling capacity, between metal containers and combat goods requiring sheet steel, occurs primarily at the "strip" and "reducing" stages, intermediate processes through which a steel ingot must pass before final rolling to the specified gauge. Capacity for these processes is limited to about thirty plants, and production is fully scheduled a month or more in advance of anticipated need. Scheduling of rolling mill "space" assures maximum production for military requirements and, at the same time, protects output for metal containers to carry the most essential civilian goods, WPB said.

Canners have been urged both by the War Food Administration and WPB to submit their orders for cans and other containers as early as possible to enable can manufacturers to plan future deliveries.

PROCESSORS USING EGGS ALLOTTED EXTRA SUGAR

OPA Grants Emergency Dispensation to Cover Next Thirty Days

The Office of Price Administration is permitting a special emergency allotment of sugar for processors who increase the use of eggs in their products during the next 30 days.

Effective June 19, any industrial user who customarily uses eggs and who will increase his use of eggs—fresh, frozen or dried—in the production of the products for which he receives a regular sugar allotment will be given an additional allotment of sugar for the third quarter ranging up to 5 per cent of his base (1941) use.

Although the additional allotments are computed on a 3-month base, OPA pointed out that the egg surplus problem is an immediate one and urged that industrial users step up their use of eggs at once and use the additional quantity during the next 30 days, if production and distribution facilities will permit.

OPA said it is expected that the special allotment will result in an increase in the use of eggs in production of mayonnaise, certain baby foods, and some other foods.

Industrial users may make application for the special emergency allotment of sugar on Form R-315 at any time before August 1, 1944. Applications are filed at the local board or district OPA office at which the user is registered and should state:

(1) The amount of sugar applied for; (2) the products in which he customarily uses eggs and in which the additional sugar and eggs will be used; (3) that the applicant will use the additional sugar and eggs in accordance with the provisions of the amendment.

M. J. Bogdanovich Dies

Martin Joseph Bogdanovich, a leader in the California fish canning industry, died suddenly of a heart attack on June 19 at San Pedro as he was just about to speak in the Fifth War Loan Drive before a large group celebrating Yugoslav Day. Mr. Bogdanovich was president of the French Sardine Company, president of the High Seas Tuna Packing Company of San Diego, vice-president of the South Coast Fisheries Company, treasurer of the United Committee of Southern Slavic Americans and a member of the board of directors of the San Pedro Chamber of Commerce. Born at Komiza, Yugoslavia, in 1883, he had resided in San Pedro for 35 years.

Canners Urged to Let USES Know of Labor Needs at Once

Canners whose labor needs have not been made known to the local U. S. Employment Service offices should take immediate steps at once to see that this is done. Unless the USES is fully informed of canners' labor requirements, it is difficult for them to work on the problem. If the USES local representative has not been active in cooperating to make plans for securing labor for any canning plant, the canner is perfectly justified in presenting the situation to the USES area director and, if necessary, to the State director.

Like every other business responsibility, the security of labor continues to rest on the canner's shoulders. No government agency or any group of them can fill the labor needs of the industry. One of the sources of assistance which the canner should use to the fullest extent is the USES. As in the case of every other successful accomplishment, the canner must work intelligently with and, when necessary, press those from whom he expects results which in the case of labor recruitment is the USES.

Wages for Asparagus Workers

The War Food Administration Director of Labor has issued an order (Specific Wage Ceiling Regulation No. 11) establishing maximum wage rates for workers engaged in cutting, bunching, and packing asparagus in Kent and Sussex counties, Delaware. This is the first specific wage ceiling regulation covering farm workers to be issued in Delaware.

A maximum piece-work rate of 8 cents per bunch is established for the complete operation of cutting, bunching, and packing in the field in all parts of both counties. The maximum hourly rate is 40 cents per hour in both counties except in the Bridgeville area where it is 45 cents. Housing may, but meals may not, be furnished in addition to the specified rates.

The Bridgeville area is defined as follows: As far north as Greenwood, as far west as the Delaware-Maryland line, as far south as Cannon's Crossing, and as far east as the road intersecting Route No. 16 on the north and Route No. 18 on the south at an average distance of about 4½ miles.

The newly established Delaware WFA Wage Board, situated at the University of Delaware in Newark, will administer the order in accordance with the specific wage ceiling regulations issued by the War Food Administrator, January 20.

Oregon Pea Picking Wage

An order issued by the War Food Administration Director of Labor has established 60 cents per full bushel hamper as the maximum wage rate for picking green peas for market in Malheur County, Oregon.

The order (Specific Wage Ceiling Regulation No. 12) is the first of its kind to be issued in Oregon. It will be administered by the newly established Oregon WFA wage board, situated in the Mayer Building at Portland. Its administration will be in accordance with specific wage ceiling regulations issued by the War Food Administrator January 20.

This ceiling is the same as that established in Specific Wage Ceiling Regulation No. 10, issued June 12, for picking green peas for market in eight Idaho counties, which was reported in last week's INFORMATION LETTER.

CUCUMBERS FOR PICKLES

Report on 1944 Preliminary Acreage Is Issued by USDA

The 1944 preliminary estimate of acreage planted to cucumbers for pickles is 99,280 acres, according to the June 22 report of the Bureau of Agricultural Economics. This is an increase of about 3 per cent over the 1943 planted acreage of 96,660 acres and the average planted acreage for the preceding 10-year (1933-42) period of 96,360 acres is exceeded by about the same percentage.

Most of the acreage increase for this year is in the Northwest, Colorado, Missouri, Wisconsin, and some of the Middle Atlantic States.

State	Planted acreage 1943	1944 Preliminary	As per cent of 1943
	Acres	*Acres*	*Per cent*
Massachusetts	560	800	143
New York	500	500	100
Ohio	3,300	2,700	82
Indiana	4,100	3,000	73
Illinois	1,700	1,500	88
Michigan	27,300	27,800	102
Wisconsin	14,500	16,800	116
Minnesota	2,000	2,000	100
Iowa	900	800	89
Missouri	900	1,200	133
Maryland	*3,700	4,100	111
Virginia	3,600	4,400	122
North Carolina	6,300	6,500	103
Louisiana	300	300	100
Texas	6,000	4,000	67
Colorado	1,950	2,100	108
Washington	300	400	133
Oregon	1,300	1,700	131
California	2,240	2,140	96
Other States	15,210	16,540	109
Total	96,660	99,280	102.7

* Revised.

PROCESSING SNAP BEANS

USDA Acreage Estimate Almost Equals Last Year's Record High Figure

The preliminary estimate of 179,040 acres planted in the United States to snap beans for processing almost equals last year's record high acreage of 179,300 acres, according to the June 22 report issued by the Bureau. This compares with the average planted acreage for the preceding 10-year (1933-42) period of 69,980 acres.

The largest increase was made in the acreage planted in Maine, New York, and Pennsylvania. This group shows about a 10 per cent acreage increase over 1943, which was a season with heavy rains interfering with planting operations, particularly in New York.

Growers in the Western States have planted nearly 3 per cent more acres to this crop than they planted in 1943. In the South Central States, acreage expansion in Tennessee, Texas, and Oklahoma more than offset the reduction in Louisiana, Mississippi, and Arkansas, indicating a net increase of about 2 per cent.

Preliminary estimates for Michigan, North Carolina, South Carolina and Virginia show more acreage planted to snap beans for processing in 1944 than was planted in 1943. However, the expansion in these States fails to fully compensate the reduction in other important producing States.

State	Planted acreage 1943	1944 Preliminary	As per cent of 1943
	Acres	*Acres*	*Per cent*
Maine	3,210	3,250	101
New York	14,400	16,100	112
Pennsylvania	5,600	6,200	111
Indiana	2,400	2,000	83
Michigan	8,400	8,800	105
Wisconsin	13,000	12,400	95
Delaware	*2,400	2,100	88
Maryland	14,700	14,000	95
Virginia	4,800	5,000	104
North Carolina	4,000	4,200	105
South Carolina	*4,300	4,800	112
Georgia	6,600	6,000	91
Florida	*21,200	20,000	94
Tennessee	7,700	9,000	117
Mississippi	3,200	3,000	94
Arkansas	*19,500	18,900	97
Louisiana	4,900	4,400	90
Oklahoma	13,000	13,500	104
Texas	7,500	8,200	109
Colorado	1,700	1,700	100
Utah	900	1,000	111
Washington	2,300	2,300	100
Oregon	4,500	4,700	104
California	1,130	1,100	97
Other States	7,960	6,390	80
Total	179,300	179,040	99.9

* Revised.

SWEET CORN PROCESSING

USDA Acreage Estimate for 1944 About 5% Less Than Last Year

The U. S. Department of Agriculture estimate of 526,380 acres planted in 1944 to sweet corn for processing is about 5 per cent less than the 1943 planted acreage of 553,110 acres but exceeds the average planted acreage for the preceding 10 years (1933-42) of 378,130 acres by 39 per cent. Wisconsin, New York and Minnesota are the only important States where more acreage is estimated for this year than was planted in 1943.

A segregation of the 1944 acreage to show the estimated plantings of each of four types or varieties indicates 378,250 acres planted to yellow Bantam and other yellow varieties, 75,420 acres planted to Evergreen and Narrow grain types, 56,470 acres planted to Country Gentleman and 16,240 acres planted to other white varieties. In 1943, estimates show 385,550 acres planted to yellow Bantam and other yellow varieties, 76,330 acres planted to Evergreen and Narrow grain and 80,770 acres planted to Country Gentleman and 10,460 planted to other white varieties.

The following table summarizes data on the plantings of sweet corn for canning and acreage contracted for freezing, compared with earlier years.

	1939	1940	1941	1942	1943 Revised	1944 Preliminary
Contracted or planted for freezing	4,930	3,580	4,880	8,600	21,600	17,500
Plantings for canning or other processing	249,530	327,790	455,200	508,420	531,510	508,880
Total	254,460	331,370	460,080	517,020	553,110	526,380

The table below, prepared by USDA, presents the preliminary planted acreage for 1944, with comparisons.

State	Planted acreage 1943	1944 Preliminary	As per cent of 1943
	Acres	*Acres*	*Per cent*
Maine	14,800	14,800	100
New Hampshire	510	480	94
Vermont	1,100	1,100	100
New York	*27,400	28,200	103
Pennsylvania	17,400	16,500	95
Ohio	29,000	26,100	90
Indiana	*55,200	44,700	81
Illinois	74,900	68,200	91
Michigan	*6,500	5,750	88
Wisconsin	*75,000	82,500	110
Minnesota	90,000	91,000	101
Iowa	62,600	53,600	86
Nebraska	4,200	2,450	58
Delaware	*4,600	4,400	92
Maryland	52,300	50,700	97
Tennessee	2,600	2,500	96
Washington	12,000	11,300	94
Oregon	4,900	4,800	98
Other States	17,900	17,100	96
Total	553,110	536,380	95.2

* Revised.

Surplus Trucks Available

State and county AAA committees are cooperating with the Treasury Department's Procurement Division in placing surplus used Army trucks so as to meet critical agricultural needs, the War Food Administration states.

Under a procedure developed by the two agencies, Treasury Procurement regional offices will notify the State AAA offices in the respective regions how many trucks will be available to distribute in each State and also will supply detailed information about each truck—its age, make, body type, condition, and other data. The State AAA offices then send this information to the county AAA offices where it is used in handling applications and certifying the needs of farmers and other agricultural haulers for available trucks. Certification will be made in the form of a letter addressed to dealers, truckers or farmers and will enable truck dealers to negotiate directly with the regional Treasury Procurement office and purchase the designated trucks. Dealers pay the Procurement Division appraised price which is set for each truck, and sell to farmers at or below OPA ceiling prices for used trucks. Prices and dealers' margins are controlled by Maximum Price Regulation 341, revised.

Dry Bean and Pea Stocks

A survey of stocks of dry beans and dry peas made by the Crop Reporting Board of the U. S. Department of Agriculture indicates that on June 1 there were 726,000 bags of dry beans (uncleaned) on farms and 4,308,000 bags (cleaned) stored in the usual commercial storage places and under War Food Administration storage contracts in or near producing areas.

On the same date there were 129,000 bags of dry peas (uncleaned) on farms and 2,864,000 bags in usual commercial and WFA storage places in producing States.

The 1943 estimates of stocks of beans and peas include WFA stocks only to the extent they were in usual storage places. Estimated stocks do not include beans and peas already in direct consumption trade channels.

PROCESSING GREEN PEAS

USDA Issues Report on 1944 Indicated Production and Acreage

Based on reports received from processors of green peas containing information on the condition of the crop on June 15 and the probable yield per acre, the U. S. Department of Agriculture estimates this crop will total 415,570 tons for 1944. This indicated tonnage exceeds the 1943 production of 410,670 tons by only 1 per cent but it is nearly 60 per cent above the average production of 260,200 tons obtained in the preceding 10-year (1933-42) period.

The 1944 yield indicated on June 15 of 1,724 pounds per acre compares with 1,883 pounds harvested in 1943 and an average of 1,632 pounds per acre obtained for the preceding 10-year (1933-42) period. Frequent rains and thunderstorms in Iowa, Illinois, Minnesota, and Wisconsin were unfavorable for this crop in these States. Dry weather reduced the tonnage in Virginia. The tonnage obtained from the early-harvested fields in the Western States was disappointing but the later-planted fields look promising.

The following table, prepared by USDA, presents the 1943 harvested and 1944 acreage, along with the 1943 and indicated 1944 production, expressed in shelled tons:

State	Acreage Harvested, 1943. Revised	Acreage Planted, 1944	Production 1943 Revised	Production Indicated, 1944
	Acres	*Acres*	*Tons*	*Tons*
Maine	5,530	5,700	4,810	4,500
New York	23,800	44,900	14,400	34,800
Pennsylvania	17,500	18,200	15,050	17,290
Ohio	7,100	7,600	4,440	5,320
Indiana	13,700	10,700	7,670	8,240
Illinois	19,700	20,800	13,320	15,080
Michigan	9,000	14,400	6,480	10,800
Wisconsin	151,000	153,000	130,630	126,220
Minnesota	30,500	43,700	30,220	27,310
Iowa	4,000	3,950	3,780	2,530
Delaware	3,800	3,500	2,340	2,620
Maryland	15,900	12,800	13,120	10,880
Virginia	3,900	3,200	3,100	2,080
Colorado	5,000	5,200	5,950	4,810
Utah	16,200	15,800	25,350	20,540
Washington	42,000	50,000	50,610	54,650
Oregon	39,300	48,500	51,090	49,710
California	4,280	4,850	5,650	4,850
Other States	14,870	14,750	17,670	13,340
Total	436,080	482,150	410,670	415,570

Headley Joins Apple Dryers

Ralph S. Headley has resigned from the Fruit and Vegetable Branch of the War Food Administration to become Secretary-Manager of the National Apple Dryers Association. Mr. Headley joins the apple organization after years of trade and government experience.

CHEMICAL PRESERVATIVES AS HOME CANNING POWDERS

Medical Journal Warns Against Unsafe and Undesirable Materials Now Reappearing in Market

The Journal of the American Medical Association for June 3, 1944, presented a report of that Association's Council on Foods and Nutrition on chemical preservatives as home canning powders. The report states:

"With the interest in home canning of fruits and vegetables being revived by the wartime shortages of food and the desire to preserve Victory garden produce, chemical preservatives designated as 'canning powders' or 'compounds' are again appearing on the market. From time to time these have been condemned as unsafe and undesirable, but new ones always spring up under a new guise.

"There have been a number of chemical compounds used in the past as food preservatives. Such harmless substances as salt, vinegar, sugar or spices are in good repute and are still commonly used today under appropriate conditions. Others, such as formaldehyde, salicylic acid, borax, phenol and monochloracetic acid, have been ruled out as food preservatives either by law or by common acknowledgment of their toxic properties. Boric acid was specifically declared unsuitable for use in foods in Great Britain by law in 1927, and foods containing this substance have been prohibited in interstate commerce in the United States for many years.

"There are some chemical materials, however, which because of certain antiseptic properties attributed to them and because of their apparent lack of definite toxic effects have enjoyed periodic use as preserving agents. In this category are found sodium benzoate, the sulfur containing compounds of the type of bisulfites, and acetylsalicylic acid. These chemicals are the ingredients commonly found in the proprietary compounds which are promoted as canning powders. * * * Not one of them is sufficiently reliable or effective under the conditions which may be met to warrant its use."

Following a discussion of the properties of sodium benzoate, sulfites, and acetylsalicyclic acid, the report concludes:

"From the foregoing discussion it should be evident that there is available today no chemical preservative which is satisfactory for home canning either as the sole agent used or as an adjunct to rapid heat processing methods. The primary danger of such methods lies in their ineffectiveness as sterilizing procedures, while the possibility of toxicity, although not great, must be kept in mind where such foods are consumed in sufficient quantities. The fact remains clear that, for proper home canning, reliance must be placed on careful attention to sanitary precautions and adequate methods of heating, with pressure cooking equipment for meats and vegetables and thorough cooking of fruits for the proper length of time as recommended in authoritative publications such as those of the U. S. Department of Agriculture or the various state extension services."

Pacific Halibut Allocated

An order providing for the allocation among dealers of all Pacific halibut landed at United States ports on the Pacific coast and in Alaska became effective June 23.

Under the terms of the order, no person or firm may purchase halibut from fishing vessels after that date without a permit issued by the Office of the Coordinator of Fisheries in Seattle. Any person engaged in dealing in halibut during 1941, 1942, or prior to July 13, 1943, and who desires to continue such operations, will be issued a permit on request, but others, who desire to enter the halibut business, in order to secure a permit, must satisfy the Coordinator of Fisheries that their proposed operations "would not unduly disrupt the marketing, processing and distribution of fish and would not interfere with the programs of the Office of Price Administration or the War Food Administration and would be otherwise consistent with the purposes of this order."

Advice of OPA, WFA, and the War Manpower Commission may be sought by the Coordinator of Fisheries in passing on applications for permits.

CALIFORNIA SWEET CHERRY GROWER PRICES ANNOUNCED

(Concluded from page 8273)

fornia were $138 per ton and $117 per ton, respectively. Therefore, in establishing canners' and freezers' ceiling prices for the 1944 season, an average increase of $95 per ton in grower prices over 1941 will be reflected in costs and consequently in the ceiling prices for the canned and frozen products this year. The increase in grower prices for cherries, used for brining, and for cocktail, Maraschino or glace cherries, etc., will be $97 per ton over the 1941 level.

The method being used by OPA in establishing ceiling prices for processed cherries will permit the payment of the normal price differentials for the raw fruit grown in the various sections of the State and for the different grades normally purchased by processors.

After consultation with representative growers and processors the following price schedules, which represent the prices for the raw fruit that processors should be able to pay under their 1944 ceiling price structure, were established:

	For canning and freezing per ton	For brining per ton
District 1:		
Grade 1	$260	$260
Grade 2	195	195
Doubles	...	98
District 2:		
Grade 1	235	235
Grade 2	176	176
Doubles	...	88
District 3:		
Grade 1	210	210
Grade 2	158	158
Doubles	...	79

District 1 includes the following counties: Santa Clara, Alameda, Santa Cruz, and Monterey. District 2 includes the counties of Sonoma, Salano, Napa and West Contra Costa (West of Mt. Diablo Meridian). District 3 includes the counties of San Joaquin, Stanislaus, Sacramento, Placer, Yuba, Sutter, Butte and the remainder of Contra Costa county.

Grade 1 canning and freezing cherries are 85 or less to the pound and Grade 2 are 86 to 120 to the pound, including stems. Grade 1 brining cherries are 100 and less to the pound, and Grade 2 are 101 to 120 to the pound, including stems. The above prices are based upon the customary grading procedure and with the customary tolerance for defects.

Prices for other areas will be announced soon, it was stated.

Wholesale Inventory Balance

An easier way by which wholesalers who have an excess inventory of processed foods may figure the quantity they may buy to keep their stocks balanced has been specified by the Office of Price Administration, in Amendment 39 to Revised Ration Order 13, which becomes effective July 2.

The plan provides that a wholesaler, even though he may exceed his maximum allowable inventory, may buy foods equivalent to not more than five per cent of that allowable inventory in order to keep his stocks balanced. Stocks are unbalanced when a wholesaler has too much or too little of a particular food item for the needs of his customers, the OPA release stated.

Before this change was made, such wholesalers were limited to 10 per cent of their point sales in April, 1943.

The use of a current base period, which is now possible, is desirable, said OPA, because of the addition of new items to the list of rationed processed foods since April, 1943 (the old base period), and because a number of new wholesalers have entered business since that time.

OPA Extends Price Control to Include Farm Services

Where the War Food Administration has taken action to establish maximum wage rates of farm workers, ceilings may be established on the rates for services rendered on the farm by independent contractors, the Office of Price Administration said June 23.

These services, which may be rendered in connection with the planting, cultivating, harvesting or preparation for market of agricultural commodities, or in connection with the raising or preparation for market of livestock, or livestock and poultry products, were previously put under the regulation governing the prices of services generally.

The provision stipulates that ceilings will apply on the rates only when a supplementary regulation is subsequently issued by OPA. Thus, it is merely an enabling authority under which OPA can act promptly.

The action, effective June 28, was taken at the request of WFA which, while it has the power to establish maximum wage rates of farm workers, does not have the authority to establish rates charged by suppliers of agricultural services who are known as independent contractors.

Actions taken by OPA under this authority will parallel those taken by WFA in the matter of farm employee wages, and generally will be taken where the WFA so recommends the action.

Heretofore agricultural services generally have been exempt from price control.

Transfer of Preference Rating Title Allowed for Financing

The War Production Board has explained that its rules and regulations do not prohibit transfers of title to goods acquired on preference ratings if such transfer is for bona fide security reasons in connection with financing operations. This action is contained in Direction No. 2 to Priorities Regulation No. 1.

To illustrate this rule, WPB pointed out that if a customer wants his purchase on a rated order to be financed by a finance company, which is to take title to the goods acquired for security reasons, the rated order may be placed in the name of the finance company, calling for delivery to it in care of the customer. Similarly, a person who has obtained material with priorities assistance may execute a chattel mortgage on it or give a similar lien where it is done in good faith to finance his work in process.

If the party financing the transaction forecloses and takes the material, he must use it for a purpose that is permitted under the terms of WPB orders and regulations, or sell it in accordance with WPB rules set forth in Priorities Regulation No. 13, governing special sales, the agency said.

Contract Settlement Training

A contract settlement training program for war contractors and government representatives alike, has been opened at University of Pennsylvania, Philadelphia. Its purpose is to speed the settlement of terminated war contracts and in that way contribute to swift reconversion by giving key representatives of both Government and industry advance training in dealing with contract settlement problems. The program will serve as a model for a nation-wide program which will use an estimated 50 colleges and universities in various parts of the country, according to the Joint Contract Termination Board.

Frozen Fruit and Vegetable Stocks Held in Cold Storage

Stocks of frozen fruits in storage on June 1, 1944, totaled 116,111,000 pounds against 130,906,000 on May 1, 1944, and 96,515,000 on June 1, 1943, according to the Food Distribution Administration. Frozen vegetable stocks on June 1, 1944, were 98,576,000 pounds against 106,176,000 on May 1 this year and 56,689,000 on June 1, 1943. The following table furnishes details by commodities:

	June 1, 1943	May 1, 1944	June 1, 1944
FRUITS	*1,000-lbs.*	*1,000-lbs.*	*1,000-lbs*
Blackberries	3,032	3,782	2,644
Blueberries	4,248	9,609	8,105
Cherries	8,664	8,932	6,194
Logan and similar berries	1,774	2,256	1,610
Raspberries	7,975	8,806	6,371
Strawberries	23,898	11,480	18,908
Other fruits	29,877	64,531	53,334
Classification not reported	17,547	21,510	18,945
Total	96,515	130,906	116,111
VEGETABLES			
Asparagus	4,841	2,643	5,219
Beans, lima	7,437	4,826	3,736
Beans, snap	1,886	8,303	6,198
Broccoli, green	958	3,148	3,042
Corn, sweet	2,282	8,067	5,692
Peas, green	13,503	21,035	14,804
Spinach	6,010	8,999	10,413
Other vegetables	10,191	28,551	23,038
Classification not reported	8,681	25,514	26,434
Total	56,689	106,176	98,576

Price Increase Permitted for Certain Glass Container Sales

"Producing" manufacturers of commercial glass bottles or containers and wide mouth glass containers may increase present ceiling prices in sales to other manufacturers, provided the latter agree to absorb the resulting increases, the Office of Price Administration recently announced, in issuing Amendment No. 6 to Maximum Price Regulation No. 382 and Amendment No. 40 to Order No. A-1 under Section 1499.159b of MPR No. 188.

Effective June 20, this action will make it possible for manufacturers who actually produce the articles to continue to serve other manufacturers who buy from the producer and resell the products under their own trade name.

Increased production costs have made it impossible for some producers of the glass containers to continue to sell to other manufacturers at present established prices and discounts. A number of glass container manufacturers have indicated a desire to be permitted to negotiate a price with producers above present ceilings, with the understanding that the buyer will absorb the increase.

Accordingly, OPA has approved such transactions, providing the following conditions are met: (1) Both seller and buyer must be "manufacturers" as defined in the amendments, and (2) any increase in price resulting from the agreement must be absorbed by the buying manufacturer and may not be reflected, directly or indirectly, in the resale price; nor may such increase be used as the basis for a request for an increase in price by way of an application for adjustment or petition for amendment.

Sugar for Home-canned Fruit

Acting to assure an adequate amount of canning sugar in areas where fruit crops are now available, the Office of Price Administration recently issued Amendment 23 to Revised Ration Order 3, permitting issuance of the full canning sugar allotments at one time in these areas, effective on June 16.

Areas where local War Price and Rationing Boards may issue the full 20-pound-per-person supplemental allotment will be designated by OPA's regional administrators and announced by its district directors, it was stated.

The maximum amount of sugar a ration book holder may obtain for home canning this season remains unchanged at 25 pounds, OPA said.

Citrus Committees Named

Advisory committees for the processed citrus fruit and citrus concentrate industries have been announced by the War Food Administration and the Office of Price Administration. The committees will advise with officials of both agencies concerning the wartime problems affecting their respective industries.

Members of the two committees are:

Processed Citrus Fruit Industry Advisory Committee—A. L. Cramer, Engelman Products Company, Elsa, Texas; Robert Flowers, Mitchell Canneries, Fort Meade, Florida; Charles M. Henderson, Adams Packing Association, Auburndale, Florida; E. J. Kitterman, Desert Citrus Products Association, Tempe, Arizona; Carroll E. Lindsey, Lakeland Highlands Canning Co., Inc., Highlands City, Florida; W. K. McCracken, Treesweet Products Company, Santa Ana, California; R. B. McLeaish, Rio Grande Valley Citrus Exchange, Weslaco, Texas; M. C. Peters, Floridagold Citrus Corp., Lake Alfred, Florida, and J. R. St. Clair, St. Clair Foods Company, Ltd., McAllen, Texas.

Citrus Concentrate Industry Advisory Committee—W. D. Aitken, Mission Dry Corporation, Los Angeles, California; Herbert S. Bailey, The Exchange Orange Products Co., Ontario, California; H. T. Lee, Mutual Citrus Products Co., Inc., Anaheim, California; H. S. Massey, Pasco Packing Association, Dade City, Florida; Harold S. Norman, Florida Citrus Canners Cooperative, Lake Wales, Florida, and B. C. Skinner, Citrus Concentrates, Inc., Dunedin, Florida.

John E. Dodds, Chief, Processed Marketing Division, WFA's Fruit and Vegetable Branch, is government chairman of both citrus committees.

Farm Employment Up in May

Following is an excerpt from the Farm Labor Report of the Bureau of Agricultural Economics:

With generally favorable weather in most parts of the country during May, considerable progress was made in catching up with seasonal farm work which had been retarded by a late spring. Total farm employment is estimated at 11,285,000 for the first of June, an increase of 12 per cent from May 1 compared with a normal rise of 8 per cent from May 1 to June 1. Total employment on June 1, however, was 3 per cent below a year earlier, due mainly to a 9.5 per cent decrease in the number of hired workers, as the number of family workers was only one per cent below June 1, 1943. Compared with a year ago, declines in total employment were shown in all of the regions except the Pacific.

CONGRESS EXTENDS PRICE CONTROL TO JULY, 1945

(Continued from page 8273)

This compromise, which is discussed in more detail in a later portion of this article, provides that it is unlawful to establish or maintain any maximum price for any agricultural commodity or any product processed or manufactured from any agricultural commodity which reflects to the farm producers a price below the higher of the parity price, or the highest price received by the farm producers between January 1 and September 15, 1942. This requirement is pointed up by the further requirement that the highest price standard of parity or the January to September, 1942, price shall be applied separately to "each major item" made from cotton or cotton yarn. In this way, cotton farm producers are to be guaranteed parity prices. In addition, the loan rate for cotton commodities on loans made by the Commodity Credit Corporation is raised from 90 to 92½ per cent of parity.

The conferees refused to accept the House provision which would have directed that no interpretation of the Act should be made to give the Price Administrator "the right to fix profits where such action has no relation to price control." The conferees stated that this provision had been omitted because it was unnecessary. The conferees said that the provision "contained a clear and undesirable implication that the Price Administrator would have power to fix profits where such action had no relation to price control. Apart from this implication, the provision was believed to be surplusage, since the Price Administrator does not now have the authority to fix profits, as such, under any circumstances, and will not have such authority after the enactment of the legislation here proposed."

The conferees also rejected the Dirksen amendment which would have allowed the validity of OPA regulations to be tried both in Federal District Courts and the Emergency Court of Appeals. This amendment would have destroyed the present exclusive jurisdiction of the Emergency Court of Appeals to decide the legality of OPA regulations. In its place, the conferees adopted a substitute provision similar to that of the Senate bill, which provides for a stay in all cases involving OPA price violations until the defendant in the particular proceeding has obtained a decision by the Emergency Court on the validity of the particular regulation. The details of this provision are explained in later portions of this article.

Both the House and Senate adopted similar amendments which expand and liberalize the procedure by which protests to OPA regulations may be made. These amendments were retained in the conference substitute. Under present law, which has been severely criticized by some members of the United States Supreme Court, the right to protest was only available either within 60 days after a price regulation was issued or within 60 days after new grounds for protesting a particular regulation had arisen. Under the conferees' text, a protest may be filed at any time, and, furthermore, all protests filed after September 1, 1944, must be reviewed, on the protestant's request, by a special board of review before which the protestant to a particular regulation may present written evidence and oral argument.

The Senate bill provided that wages of persons who made less than $37.50 per week were to be exempted from salary stabilization controls. This amendment was not adopted by the House and was also rejected by the Conference Committee. In contrast, a specific exemption from price control adopted by the House, which would have exempted watermelons, was rejected by the conferees.

A discussion of some of the more interesting specific provisions of the OPA legislation follows, but canners should realize that detailed explanation of the numerous complicated amendments is beyond the scope of this article.

Subsidies

The conference substitute permits the present subsidy programs to be continued until June 30, 1945, the date of expiration of the OPA and Price Stabilization Acts as extended. From June 30, 1945, on, no subsidy program would be permitted unless specific appropriations are made by Congress. Similarly, expansion of present subsidy programs before June 30, 1945, through the method of naming agricultural commodities as critical materials to be subsidized by RFC subsidies, is also prohibited. Canners are particularly affected by the June 30, 1945, subsidy prohibition, for this means that no government corporation, no government department, nor any other government agency, is allowed to use its funds which may be available for "subsidy" operations, including purchase and sale at a loss, unless the Congress has made specific appropriations for that specific purpose. The exact effects of this prohibition are not clear for the provision raises complex questions as to what is a "subsidy."

Guarantee of Parity Payments to Farm Producers

The House adopted amendments which would have required processors of agricultural commodities, including canners, to see that the farm producers of the agricultural commodities received not less than the higher of parity or the January to September 15, 1942, price. This would have been accomplished by the Kleberg amendment making it unlawful to pay subsidies to processors unless they paid this price to farm producers and the Pace amendment requiring a reduction of a processor's maximum price by 10 per cent unless he paid that price. Numerous legal and administrative difficulties were raised by these two amendments. The conferees resolved the numerous difficulties by recommending a provision which repeats the present requirement that any maximum price for an agricultural commodity or a commodity processed in whole or part from an agricultural commodity must "reflect" to the farm producers a price of either parity or the January-September 15, 1942, price, whichever is higher. In this connection, the Bankhead compromise is reflected in this particular amendment by requiring that this provision shall be applied separately "to each major item * * * made in whole or major part from cotton or cotton yarn."

In addition, a directive to the President is given requiring him to "take all lawful action to assure that the farm producer of any basic agricultural commodities (cotton, corn, wheat, rice, tobacco and peanuts) and of any agricultural commodity with respect to which a public announcement has been made" under the Steagall Act "receives not less than the higher of the two prices" of parity or the January to September 15, 1942, price. This provision, in effect, requires an upward revision of certain maximum prices for particular commodities processed from agricultural commodities to reflect the increased raw material costs required by this amendment to be paid to the farm producer and which can not be subsidized by the Government beyond June 30, 1945.

Most of the products which canners process are not basic agricultural commodities or so-called non-basic agricultural commodities for which support prices have been announced under the Steagall Act. Thus, from the point of view of canners, the more important provision is that prohibiting subsidies after next June.

Protest Procedure

The amendments which have been incorporated in both the House and Senate bills and modified to some extent by the conferees permit a protest to be filed *at any time* to a price regulation. This means that the former 60-day period within which a protest had to be filed, the period being dated from either the date of the regulation or the time within which new grounds for protest arose, has been eliminated.

In addition, a protestant is entitled to ask for review of his protest by a board of review. This board is to consist of OPA employees. The board is to hold hearings and receive written evidence and listen to oral argument by the protestant. After the board receives the written evidence and hears the oral argument, it is required to make written recommendations to the Price Administrator. The protestant is entitled to receive the recommendations of the board and also to be informed of the reasons of the Price Administrator if he should reject the recommendations of the board. Canners should note, however, that this review by the board will only apply to protests which are filed *after* September 1, 1944.

Much criticism has been directed to OPA delay in deciding protests. The conference substitute contains provisions to remedy this. No requirement that the Price Administrator decide a protest in a stated period is imposed, but he is required to make his decision "within a reasonable time." Then, if the protestant feels injured by "undue delay" in making the decision, he may ask the Emergency Court for relief. The Court is authorized to require the Administrator to make a decision in a certain time. If he fails to do so, the protest is to be considered denied, so that the protestant may appeal to the Emergency Court for a decision on his protest.

In this way, the conference version meets the numerous criticisms of the OPA protest procedure which has been denounced as restricting full consideration of the protestant's position.

Court Review

One of the most important controversies in the Congressional consideration of the OPA extension was the extent to which the exclusive jurisdiction of the Emergency Court of Appeals to decide the validity of OPA regulations should be restricted. Canners will recall that the United States Supreme Court in the *Yakus* case (see INFORMATION LETTER No. 979, April 1, 1944) decided that even in a criminal case where a defendant was charged with violating a regulation which might be invalid, the defendant could not raise in the criminal case the question whether he was being prosecuted under an invalid provision. The effects of this case and the desire to eliminate the exclusive jurisdiction of the Emergency Court led to the proposal of the Dirksen amendment to permit appeals from OPA decisions to all Federal district courts and to counter proposals allowing a stay in a court enforcement proceeding pending a decision by the Emergency Court of the validity of the particular regulation involved in the enforcement proceeding.

The conference substitute rejects the Dirksen amendment. Thus, the Emergency Court is left with exclusive jurisdiction to decide cases concerning the validity of price regulations. However, the conference version meets the objections raised in the *Yakus* case by providing that any person *before or after* conviction in a criminal case, and *after* judgment in a civil case, may ask the court for leave to file with the Emergency Court a complaint claiming the price regulation is invalid. If the defendant in the case shows that his complaint is to be made in good faith and that he had a substantial excuse for failing to file a protest before the institution of the court proceeding, the court may grant permission to the defendant to file the complaint against the regulation with the Emergency Court. If he grants permission, the judge is then required to stay the price violation proceeding until decision by the Emergency Court.

In addition, if the defendant, before the price violation proceeding is started, had filed his protest on which a decision remains to be made, the court in which the enforcement case is being tried must stay the enforcement proceeding until decision on the protest. This means a stay *both* until the Price Administrator decides the protest *and* until the Emergency Court has made its decision on an appeal, if appeal is taken from the Price Administrator's decision, or until the time for taking an appeal has expired.

To safeguard OPA enforcement, however, the conference version provides that, if OPA brings an injunction proceeding to restrain alleged violations, a stay shall be granted to permit testing of the validity of the regulation in the Emergency Court, but that a temporary injunction shall be given to remain in effect during the period of the stay.

The conference substitute has thus, by liberalizing the time within which protests may be filed to a price regulation and by the provision allowing stays pending decision of the validity of a regulation by the Emergency Court, assured that no person will be deprived of a full opportunity to contest the basic legality of a particular regulation. On the other hand, the Emergency Court is left with exclusive jurisdiction in the interest of having uniform and consistent decisions on this fundamental question of validity of a particular regulation. It should be noticed, however, that the regulation which is under attack will remain in full force until an adverse decision has been made by the Emergency Court. Thus, the operation of the OPA under a regulation being challenged will continue and compliance with the regulation under attack during the pendency of the suit must be observed.

Court Enforcement Proceedings for Retail Violations

The present provision which authorizes court actions by ultimate consumers (primarily purchasers at retail), to sue for treble damages or $50, whichever is

greater, was substantially modified. The conference substitute continues the authorization that the ultimate consumer may sue a seller in any court having jurisdiction for a price overcharge. However, the substitute provides that, if the consumer does not bring this action within 30 days from the time of the overcharge, or if the consumer is not for some other reason entitled to bring the action, then the Price Administrator is to be authorized to sue. If the Price Administrator then sues, the consumer is barred from thereafter attempting to sue for damages for the same price violation.

In addition, to prevent a series of harassing suits by the same consumer against the same seller, it is provided that a judgment against the seller in an action either by the consumer or by the Price Administrator shall be a complete bar to any later suit which is based upon price overcharges made *before* the institution of the action.

The conference substitute also gives the court discretion to determine the amount of damages which may be recovered by a consumer. The present mandatory provision that the consumer shall be given damages which is the greater of $50 or treble the amount of the overcharge if a violation is shown, has been modified, first, by providing that this amount is the *maximum* damages to be recovered, and, second, by adding the new restriction that the amount of damages shall be *not* more than the *greater* of either the amount of the overcharge or $25 if the seller proves that his violation was not willful or was not "the result of failure to take practicable precautions against occurrence of the violation." This second provision is the modified version of the controversial Chandler-Weeks Senate amendment.

This originally would have applied to all enforcement proceedings but is limited by the conference substitute only to civil actions brought for retail violations. Also, the Senate amendment, which would have made lack of willfulness or reasonable precautions a complete defense, has been modified so that they now only affect the amount of damages which may be recovered. In other words, if for example, the consumer proves the seller made an overcharge but the seller proves it was not willful, the seller is still liable for damages but the amount of the damages is limited to the amount of the overcharge or $25, whichever is greater.

Various Restrictions on OPA Powers

The conference substitute imposes numerous limitations on OPA practices in administration which have been severely criticized from time to time. Perhaps one of the most interesting restrictions, which is not limited to the OPA, is the requirement that *all* agencies, offices, or officers "exercising supervisory or policy-making powers" over the OPA, the WFA, or the WPB "shall exercise such powers only through formal written orders or regulations which shall be promptly published in the Federal Register." This provision is designed to publicize policy determinations which the OPA is required to follow. For example, certain of the directives affecting maximum prices for canners, some of which were not publicized for many months (see INFORMATION LETTER, No. 963, December 4, 1943), now are required to be promptly printed and publicized. In this way the public subject to regulation should be given sufficient knowledge to discuss and challenge important policy decisions.

Canners will be particularly interested in the modification of the present provision concerning business practices. The present law provides that the price-making powers of OPA are not to be used to compel changes in business practices and methods except to prevent circumvention or evasion of price regulations. The House proposed to strike out this exception which would have severely modified numerous price regulations. The conferees restored the exception but added a new requirement. This requirement is that the Administrator must make a definite and affirmative finding that changes in business practices are necessary to prevent price evasion before he can require such changes.

The conference substitute also adopts a provision in the Senate bill offered by Senator Taft. This provision prohibits any agency, in paying money or allocating materials or facilities or fixing quotas for agricultural commodities, from imposing any penalties or conditions which are not authorized by the enabling legislation under which the money is paid or the materials or facilities allocated or the quotas fixed. If a persons feels that he has been subjected to this kind of indirect and unauthorized coercion, he may appeal to a federal district court for relief. This is designed to prevent indirect coercion. It seems to have resulted from an incident where a farmer was reported to have been forced to join an AAA production program under the threat of having his gasoline ration cancelled.

Canners should note that this prohibition is limited to agricultural commodities, which includes agricultural products. Apparently it would seem to prohibit insertion in WFA contracts with canners various conditions relating to enforcement unless those conditions are authorized by the *same* legal source authorizing the making of the contracts. The precise legal effect of this particular provision will depend upon the specific arrangement under consideration, since the various programs, contracts and allocations and quotas for agricultural commodities are based upon numerous different legal sources.

The OPA power to suspend licenses to do business because of rationing violations (see INFORMATION LETTER, No. 987, May 27, 1944, p. 8240), was also restricted by the new provisions. It is provided that no license or rationing order issued under powers given by certain war powers acts and delegated to the OPA may contain any requirement compelling observance of price regulations issued by OPA under the authority granted to it by the OPA Act. In other words, tying in of rationing and pricing as a means of enforcing pricing regulations is prohibited. For example, this provision prohibits any order which would permit suspension of rationing privileges because of a price violation.

In addition, the conference substitute has a new provision which gives the federal district courts exclusive jurisdiction to enjoin or set aside orders for suspension of allocations. An action, however, to attack a suspension order must be filed within five days after the service of the order upon the affected person.

New provisions were also added designed to prevent arbitrary action by OPA in making investigations. The House amendment would have turned the preliminary OPA investigations into a formal hearing. The conferees rejected these amendments but did provide that a person who is subpoenaed to give evidence at an investigation, which is not the same as a public hearing, is entitled to be given a record of his testimony and to be represented by counsel at the investigation.

Miscellaneous Amendments

Numerous other amendments were made by the conference substitute which reflect provisions in both the House and Senate bills about which there was little controversy. One of the most interesting is the requirement that recommendations made by industry advisory committees to the Price Administrator "shall be considered by the Administrator." This merely has the effect of assuring that the recommendations are brought to the attention of the Administrator but does not place upon him any requirement that he follow them.

The provision which would have eliminated the OPA "highest price line" prohibition affecting processors, wholesalers and retailers was limited by the conference substitute only to retailers. Thus, the OPA may continue to require processors and wholesalers not to exceed their highest price line during certain base periods but may not impose a similar requirement upon retailers.

Other provisions added by the conference substitute require notice of changes in maximum prices for farmers to be given fifteen days before the normal planting season in "each major producing area" and to require adjustments of maximum prices for fresh fruits and fresh vegetables to allow for various cost factors such as reduced crop yields, excessive production cost increases, and other costs resulting from the hazards of farming operations.